

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**DENMAN KOUNTZE, JR., as President and
Trustee of the Hitchcock Foundation,
Naples, Florida,**

Plaintiff,

vs.

FIRST NATIONAL BANK OF OMAHA,

Defendant.

8:04CV615

SCHEDULING ORDER

This matter is before the magistrate judge for full pretrial supervision. On August 31, 2005, counsel served notice (#28) that plaintiff, Denman Kountze, Jr., died on August 25, 2005. Later that day, Judge Smith Camp entered an order (#29) granted the defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), but gave the plaintiff leave to file an amended complaint on or before September 16, 2005, to satisfy the pleading requirements of Neb. Rev. Stat. § 21-1949 and to add the Gilbert M. and Martha H. Hitchcock Foundation as a party defendant.

The Notice of Death (#28) advises that this lawsuit was brought in a representative capacity. Thus, under Nebraska law, the decedent's Personal Representative cannot continue the action. Nebraska law, Neb. Rev. Stat. § 21-1918, requires that the Nebraska Attorney General be notified of the pendency of these proceedings and the occurrence of the plaintiff's death, due to the public interest in the charitable work provided by the Hitchcock Foundation.

IT THEREFORE IS ORDERED

1. Plaintiff's counsel, David A. Domina, shall inform the Nebraska Attorney General of the ruling and deadline set out in Judge Smith Camp's August 31, 2005 order (#29).

2. On or before **September 12, 2005**, Mr. Domina shall file a certificate of service showing compliance with paragraph 1, above, and listing the names and addresses of the persons to whom the information was sent.

DATED September 1, 2005.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**